

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Cox Communications, Inc.
Community Unit # AR0047
El Dorado, Arkansas

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File No. EB-00-OR-106
NAL/Acct.No. X3262011

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: August 8, 2000

By the Enforcement Bureau, New Orleans Field Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Cox Communications, Inc., (“Cox”), operator of a cable television system in El Dorado, Arkansas, has apparently violated Section 11.35(a) of the Commission’s Rules (“Rules”) by failing to have Emergency Alert System (“EAS”) equipment in operation.¹ We conclude that Cox is apparently liable for forfeiture in the amount of four thousand dollars (\$4,000).

II. BACKGROUND

2. On June 22, 2000, an agent from the Commission’s New Orleans Field Office (“Field Office”) inspected a cable television system operated by Cox in El Dorado, Arkansas and found that the EAS equipment, while installed in an equipment rack, was not operational.

3. On June 28, 2000, the Field Office sent Cox a Notice of Violation (“NOV”) for not having EAS equipment installed and operational so that the monitoring and transmitting functions were available. On July 10, 2000, Cox submitted a reply to the NOV. In their reply, Cox stated that although the EAS equipment was not fully operational at the time of the inspection because of work being done at the headend, immediately after the FCC agent left the facility, all available personnel were assigned to remedy the situation. Cox further stated that by 10:00 AM the next morning, the system was fully operational and functioning, bringing the system into full compliance with FCC rules.

¹ 47 C.F.R. §11.35(a).

III. DISCUSSION

4. Section 11.35(a) of the Rules states that, “[b]roadcast stations and cable systems and wireless cable systems are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times the stations and systems are in operation.” At the time of inspection, Cox personnel acknowledged that the EAS equipment was not operational.

5. Based on the evidence before us, we find that Cox willfully² violated Section 11.35(a) of the Rules. Pursuant to Section 1.80 of the Rules, Guidelines for Assessing Forfeitures, the base forfeiture amount for EAS equipment not installed or operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934 (“Act”), as amended, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.³ Taking these factors into account, we are reducing the forfeiture to \$4,000 as all the necessary EAS equipment was installed, but not yet operational due to extensive work being done at the system’s headend. Applying Section 1.80 of the Rules and the statutory factors to the instant case, a \$4,000 forfeiture is warranted.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,⁴ and Sections 0.111, 0.311 and 1.80 of the Rules,⁵ Cox Communications, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars (\$4,000) for violating Section 11.35(a) of the Rules, 47 C.F.R. § 11.35(a).

7. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules,⁶ within thirty days of the release date of this **NOTICE OF APPARENT LIABILITY**, Cox Communications, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by credit card through the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch,

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act....” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 U.S.C. § 503(b)(2)(D).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80.

⁶ 47 C.F.R. § 1.80.

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Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. X3262011.

9. The response if any must be mailed to Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – TPSD, NAL/Acct. No. X3262011, and must include the NAL/Acct. No. X3262011.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁷

12. **IT IS FURTHER ORDERED THAT** a copy of this **NOTICE OF APPARENT LIABILITY** shall be sent by Certified Mail, Return Receipt Requested, to Cox Communications, Inc., 1127 North Madison, El Dorado, Arkansas, 71730.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director
New Orleans Field Office

⁷ See 47 C.F.R. § 1.1914.